

FIRST REGULAR SESSION

SENATE BILL NO. 483

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 8, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2111S.011

AN ACT

To amend chapter 374, RSMo, by adding thereto fourteen new sections relating to the market conduct surveillance act, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 374, RSMo, is amended by adding thereto fourteen
2 new sections, to be known as sections 374.900, 374.903, 374.906, 374.909,
3 374.912, 374.915, 374.918, 374.921, 374.924, 374.927, 374.930, 374.933, 374.936,
4 and 374.940, to read as follows:

**374.900. Sections 374.900 to 374.940 shall be known and may be
2 cited as the "Market Conduct Surveillance Act".**

**374.903. The purpose of this act is to establish a framework for
2 insurance department market conduct actions, including:**

3 (1) Processes and systems for identifying, assessing, and
4 prioritizing market conduct problems that have a substantial adverse
5 impact on consumers, policyholders, and claimants;

6 (2) Market conduct actions by the director to substantiate such
7 market conduct problems and a means to remedy significant market
8 conduct problems; and

9 (3) Procedures to communicate and coordinate market conduct
10 actions among states to foster the most efficient and effective use of
11 resources.

**374.906. As used in sections 374.900 to 374.940 the following
2 terms mean:**

3 (1) "Complaint", a written or documented oral communication to
4 the department of insurance, financial and professional registration
5 primarily expressing a grievance, meaning and expression of

6 dissatisfaction. For health companies, a grievance is a written
7 complaint submitted by or on behalf of a covered person;

8 (2) "Comprehensive market conduct examination", a review of
9 one or more lines of business of an insurer domiciled in this state that
10 is not conducted for cause. The term includes a review of rating, tier
11 classification, underwriting, policyholder service, claims, marketing
12 and sales, producer licensing, complaint handling practices, or
13 compliance procedures and policies;

14 (3) "Department", or "insurance department", the department of
15 insurance, financial and professional registration;

16 (4) "Desk examination", a targeted examination that is conducted
17 by an examiner at a location other than the insurer's premises. A desk
18 examination is usually performed at the department's offices with the
19 insurer providing requested documents by hard copy, microfiche, discs,
20 or other electronic media, for review;

21 (5) "Director", the director of the department of insurance,
22 financial and professional registration;

23 (6) "Insurance compliance audit", a voluntary, internal
24 evaluation, review, assessment, audit, or investigation for the purpose
25 of identifying or preventing noncompliance with, or promoting
26 compliance with laws, regulations, orders, or industry or professional
27 standards, which is conducted by or on behalf of a company licensed or
28 regulated under the laws of Missouri, or which involves activity
29 regulated under this chapter;

30 (7) "Insurance compliance self-evaluative audit document",
31 documents prepared as a result of or in connection with an insurance
32 compliance audit. An insurance compliance self evaluative audit
33 document may include a written response to the findings of an
34 insurance compliance audit. An insurance compliance self-evaluative
35 audit document may include, but is not limited to, as applicable, field
36 notes and records of observations, findings, opinions, suggestions,
37 conclusions, drafts, memoranda, drawings, photographs, exhibits,
38 computer generated or electronically recorded information, phone
39 records, maps, charts, graphs, and surveys, provided this supporting
40 information is collected or developed for the primary purpose and in
41 the course of an insurance compliance audit;

42 (8) "Market analysis", a process whereby market conduct
43 surveillance personnel collect and analyze information from filed
44 schedules, surveys, required reports and other sources in order to
45 develop a baseline and to identify patterns or practices of insurers
46 licensed to do business in this state that deviate significantly from the
47 norm or that may pose a potential risk to the insurance consumer;

48 (9) "Market conduct action", any of the full range of activities
49 that the director may initiate to assess the market and practices of
50 individual insurers, beginning with market analysis and extending to
51 targeted examinations. The director's activities to resolve an
52 individual consumer complaint or other reports of a specific instance
53 of misconduct are not market conduct actions for the purposes of
54 sections 374.900 to 374.940;

55 (10) "Market conduct examination", the examination of the
56 insurance operations of an insurer licensed to do business in this state
57 in order to evaluate compliance with the applicable laws and
58 regulations of this state. A market conduct examination may be either
59 a comprehensive examination or a targeted examination. A market
60 conduct examination is separate and distinct from a financial
61 examination of an insurer performed under section 374.205, but may be
62 conducted at the same time;

63 (11) "Market conduct surveillance personnel", those individuals
64 employed or contracted by the director to collect, analyze, review, or
65 act on information on the insurance marketplace, which identifies
66 pattern or practices of insurers;

67 (12) "National Association of Insurance Commissioners" or
68 "NAIC", the organization of insurance regulators from the fifty states,
69 the District of Columbia, and the four United States territories;

70 (13) "NAIC market conduct uniform examination procedures", the
71 set of guidelines developed and adopted by the NAIC designed to be
72 used by market conduct surveillance personnel in conducting an
73 examination;

74 (14) "NAIC Market of Regulation Handbook", a handbook,
75 developed, adopted by the NAIC, or successor product, which:

76 (a) Outlines elements and objectives of market analysis and the
77 process by which states can establish and implement market analysis

78 **programs; and**

79 **(b) Sets up guidelines that document established practices to be**
80 **used by market conduct surveillance personnel in developing and**
81 **executing an examination;**

82 **(15) "NAIC standard data request", the set of field names and**
83 **descriptions developed and adopted by the NAIC for use by market**
84 **conduct surveillance personnel in an examination;**

85 **(16) "On-site examination", a targeted examination conducted at**
86 **the insurer's home office or the location where the records under**
87 **review are stored;**

88 **(17) "Targeted examination", a focused exam conducted for cause,**
89 **based on the results of market analysis indicating the need to review**
90 **either a specific line of business or specific business practices,**
91 **including but not limited to underwriting and rating, marketing and**
92 **sales, complaint handling operations or management, advertising**
93 **materials, licensing, policyholder services, non-forfeitures, claims**
94 **handling, or policy forms and filings. A targeted examination may be**
95 **conducted by desk examination or by an on-site examination;**

96 **(18) "Third party model or product", a model or product provided**
97 **by an entity separate from and not under direct or indirect corporate**
98 **control of the insurer using the model or product.**

374.909. 1. The director is responsible for conducting market
2 conduct examinations for Missouri policyholder protection, which shall
3 be accomplished by comprehensive or targeted examinations of
4 domestic insurers and targeted examinations of foreign insurers as
5 deemed necessary by the director, based on the results of market
6 analysis. The director may delegate responsibility for conducting an
7 examination of a domestic insurer, foreign insurer, or an affiliate of an
8 insurer to the insurance commissioner of another state if that
9 insurance commissioner agrees to accept the delegated responsibility
10 for the examination.

11 2. The director may delegate such responsibility to a
12 commissioner of a state in which the domestic insurer, foreign insurer,
13 or affiliate has a significant number of policies or significant premium
14 volume.

15 3. If the director elects to delegate responsibility for examining

16 an insurer, the director shall accept a report of the examination
17 prepared by the commissioner to whom the responsibility has been
18 delegated.

19 4. In lieu of conducting a market conduct examination of an
20 insurer, the director shall accept a report of a market conduct
21 examination on such insurer prepared by the insurance commissioner
22 of the insurer's state of domicile or another state, provided:

23 (1) The laws of that state applicable to the subject of the
24 examination are deemed by the director to be substantially similar to
25 those of this state;

26 (2) The examining state has a market conduct surveillance
27 system that the director deems comparable to the market conduct
28 surveillance system required under sections 374.900 to 374.940; and

29 (3) The examination from the other state's commissioner has
30 been conducted within the past three years.

31 5. If the insurance commissioner to whom the examination
32 responsibility was delegated under subsection 1 of this section or the
33 report of a market conduct examination prepared by the insurance
34 commissioner of another state under subsection 4 of this section, did
35 not evaluate the specific area or issue of concern to the director or a
36 specific requirement of Missouri law, the director may pursue a
37 targeted examination or market analysis of the unexamined area under
38 this section.

39 6. The director's determination under subsection 4 of this section
40 is discretionary with the director and is not subject to appeal.

41 7. Subject to a determination under subsection 4 of this section,
42 if a market conduct examination conducted by another state results in
43 a finding that an insurer should modify a specific practice or
44 procedure, the director shall accept documentation that the insurer has
45 made a similar modification in this state, in lieu of initiating a market
46 conduct action or examination related to that practice or
47 procedure. The director may require other or additional practice or
48 procedure modifications as are necessary to achieve compliance with
49 specific state laws or regulations, which differ substantially from those
50 of the state that conducted the examination.

374.912. 1. The director shall gather information from data

2 currently available to the department, as well as surveys and required
3 reporting requirements, information collected by the NAIC and a
4 variety of other sources in both the public and private sectors, and
5 information from within and outside the insurance industry from
6 objective sources, information from websites for insurers, agents, and
7 other organizations and information from other sources, provided the
8 sources are published at least annually in a bulletin or circular, prior
9 to use.

10 (1) Such information shall be analyzed in order to develop a
11 baseline understanding of the marketplace and to identify for further
12 review insurers or practices that deviate significantly from the norm
13 or that may pose a potential risk to the insurance consumer. The
14 director shall use the NAIC Market Analysis Handbook as one resource
15 in performing this analysis, or procedures, adopted by regulation, that
16 are substantially similar to the foregoing NAIC product.

17 (2) The director shall use the following policies and procedures
18 in performing the analysis required under this section:

- 19 (a) Identify key lines of business for systematic review;
20 (b) Identify companies for further analysis based on available
21 information.

22 2. If the analysis compels the director to inquire further into a
23 particular insurer or practice, the following continuum of market
24 conduct actions may be considered prior to conducting a targeted, on-
25 site market conduct examination. The action selected shall be made
26 known to the insurer in writing. These actions may include, but are
27 not limited to:

- 28 (1) Correspondence with insurer;
29 (2) Insurer interviews;
30 (3) Information gathering;
31 (4) Policy and procedure reviews;
32 (5) Interrogatories;
33 (6) Review of insurer self-evaluation, if not subject to a privilege
34 of confidentiality, and compliance programs, including membership in
35 a best-practice organization;

36 3. The director shall select a market conduct action that is cost
37 effective for the department and the insurer, while still protecting the

38 insurance consumer.

39 4. The director shall take those steps reasonably necessary to
40 eliminate requests for information that duplicate information provided
41 as part of an insurer's annual financial statement, the annual market
42 conduct statement of the National Association of Insurance
43 Commissioners, or other required schedules, surveys, or reports that
44 are regularly submitted to the director, unless the information is state
45 specific, and coordinate market conduct actions and findings with
46 other states.

47 5. Causes or conditions, if identified through market analysis,
48 that may trigger examination, are:

49 (1) Information obtained from a market conduct annual
50 statement, market survey or report of financial examination indicating
51 potential fraud, that the insurer is conducting the business of
52 insurance without a license or is engaged in a potential pattern of
53 unfair trade practice in violation of sections 375.930 to 375.948, RSMo.

54 (2) A number of complaints against the insurer or a complaint
55 ration sufficient to indicate potential fraud, conducting the business of
56 insurance without a license, or a potential pattern of unfair trade
57 practice in violation of sections 375.930 to 375.948, RSMo. For the
58 purposes of this section, a complaint ratio shall be determined for each
59 line of business.

60 (3) Information obtained from other objective sources, such as
61 published advertising materials indicating potential fraud, conducting
62 the business of insurance without a license, or evidencing a potential
63 pattern of unfair trade practice in violation of sections 375.930 to
64 375.948, RSMo.

65 (4) Patterns of violations of insurance law and administrative
66 regulations promulgated thereunder that cause consumer harm.

374.915. 1. Market conduct actions taken as a result of a market
2 analysis shall focus on the general business practices and compliance
3 activities of insurers, rather than identifying infrequent or
4 unintentional random errors that do not cause consumer harm.

5 2. (1) The director is authorized to determine the frequency and
6 timing of such market conduct actions. The timing shall depend upon
7 the specific market conduct action to be initiated, unless extraordinary

8 circumstances indicating a risk to consumers require immediate action.

9 (2) If the director has information that more than one insurer is
10 engaged in common practices that may violate statute or regulations,
11 he or she may schedule and coordinate multiple examinations
12 simultaneously.

13 3. The insurer shall be notified of any practice or procedure
14 which is to be the subject of a market conduct action and shall be given
15 an opportunity to resolve such matters that arise as a result of a
16 market analysis to the satisfaction of the director before any additional
17 market conduct actions are taken against the insurer. If the insurer
18 has modified such practice or procedure as a result of a market
19 conduct action taken by the commissioner of another state, the director
20 shall accept appropriate documentation that the insurer has
21 satisfactorily modified the practice or procedure and made similar
22 modification to such practice or procedure in this state.

 374.918. 1. When market analysis identifies a pattern of conduct
2 or practice by an insurer which requires further investigation, and less
3 intrusive market conduct actions identified in subsection 2 of section
4 374.912 are not appropriate, the director has the discretion to conduct
5 targeted, market conduct examinations in accordance with the NAIC
6 Market Conduct Uniform Examination Procedures and the Market
7 Regulation Handbook, or procedures, adopted by regulation, that are
8 substantially similar to the foregoing NAIC products.

9 2. If the insurer to be examined is not a domestic insurer, the
10 director shall communicate with and may coordinate the examination
11 with the insurance commissioner of the state in which the insurer is
12 organized.

13 3. Concomitant with the notification requirements established in
14 subsection 5 of this section, the director shall post notification on the
15 NAIC examination tracking system, or comparable NAIC product as
16 determined by the director, that a market conduct examination has
17 been scheduled.

18 4. The director may not conduct a comprehensive market
19 conduct examination more frequently than once every three years. The
20 director may waive conducting a comprehensive market conduct
21 examination based on market analysis.

22 5. (1) Prior to commencement of a targeted on-site market
23 conduct examination, market conduct surveillance personnel shall
24 prepare a work plan and proposed budget. Such work plan shall be
25 provided to the company under examination.

26 (2) Market conduct examinations shall, to the extent feasible,
27 utilize desk examinations and data requests prior to a targeted on-site
28 examination.

29 (3) Market conduct examinations shall be conducted in
30 accordance with the provisions set forth in the NAIC Market Regulation
31 Handbook and the NAIC market conduct uniform examination
32 procedures, or procedures, adopted by regulation, that are
33 substantially similar to the foregoing NAIC products.

34 (4) Prior to the conclusion of a market conduct examination, the
35 individual among the market conduct surveillance personnel who is
36 designated as the examiner-in-charge shall schedule an exit conference
37 with the insurer.

38 6. Announcement of the examination shall be sent to the insurer
39 and posted on the NAIC's examination tracking system, or comparable
40 NAIC product, as determined by the director, as soon as possible but in
41 no case later than sixty days before the estimated commencement of the
42 examination. Such announcement shall contain:

43 (1) The name and address of the insurer being examined;

44 (2) The name and contact information of the examiner-in-charge;

45 (3) The reason for and the scope of the targeted examination;

46 (4) The date the examination is scheduled to begin;

47 (5) Identification of any non-insurance department personnel
48 who will assist in the examination, if known at the time the notice is
49 prepared;

50 (6) A time estimate for the examination;

51 (7) A budget and work plan for the examination and
52 identification of reasonable and necessary costs and fees that will be
53 included in the bill, if the cost of the examination is billed to the
54 company; and

55 (8) A request for the insurer to name its examination
56 coordinator.

57 7. If a targeted examination is expanded beyond the reasons

58 provided to the insurer in the notice of the examination required under
59 this section, the director shall provide written notice to the insurer
60 explaining the extent of the expansion and the reasons for the
61 expansion. The department shall provide a revised work plan to the
62 insurer before the beginning of any significantly expanded
63 examination, unless extraordinary circumstances indicating a risk to
64 consumers require immediate action.

65 8. The director shall conduct a pre-examination conference with
66 the insurer examination coordinator and key personnel to clarify
67 expectations thirty days prior to commencement of the examination.

68 9. The department shall use NAIC standard data request, or
69 comparable product, adopted by regulation, that is substantially similar
70 to the foregoing NAIC product.

71 (1) A company responding to a director's request to product
72 information shall produce it as it is kept in the usual course of business
73 or shall organize and label it to correspond with the categories in the
74 demand.

75 (2) If a director's request does not specify the form or forms for
76 producing electronically stored information, a company responding to
77 the request must produce the information in a form or forms in which
78 the company ordinarily maintains it or in a form or forms that are
79 reasonably usable.

80 (3) A company responding to an information request need not
81 produce the same electronically stored information in more than one
82 form.

83 (4) A company responding to an information request need not
84 provide the electronically stored information from sources that the
85 company identifies as not reasonably accessible because of undue
86 burden or cost.

87 10. (1) The director shall adhere to the following time line,
88 unless a mutual agreement is reached with the insurer to modify the
89 time line:

90 (a) The director shall deliver the draft report to the insurer
91 within sixty days of the completion of the examination. Completion of
92 the examination shall be defined as the date the director confirms in
93 writing that the examination is completed.

94 (b) The insurer shall respond with written comments within
95 thirty days of receipt of the draft report.

96 (c) The department shall make a good faith effort to resolve
97 issues and prepare a final report within thirty days of receipt of the
98 insurer's written comments, unless a mutual agreement is reached to
99 extend the deadline. The director may make corrections and other
100 changes, as appropriate.

101 (d) The insurer shall, within thirty days, accept the final report,
102 accept the findings of the report, file written comments, or request a
103 hearing. An additional thirty days shall be allowed if agreed to by the
104 director and the insurer. Any such hearing request shall be made in
105 writing and shall be held in accordance with chapter 536, RSMo.

106 (2) The final written and electronic market conduct report shall
107 include the insurer's written response and any agreed-to or in text of
108 the examination report. The company is not obligated to submit a
109 response. References to specific individuals by name shall be limited
110 to an acknowledgment of their involvement in the conduct of the
111 examination.

112 11. (1) Upon adoption of the examination report under
113 subsection 10 of this section, the director shall continue to hold the
114 content of the examination report as private and confidential for a
115 period of thirty days, except to the extent provided in subdivision (2)
116 of this subsection. During this time, the report shall not be subject to
117 subpoena and shall not be subject to discovery or admissible in
118 evidence in any private action, provided no court of competent
119 jurisdiction has ordered production. Thereafter, the director shall
120 open the report for public inspection, provided no court of competent
121 jurisdiction has stayed its publication. This section may not be
122 construed to limit the director's authority to use any final or
123 preliminary market conduct examination report, and examiner or
124 company work papers or other documents, or any other information
125 discovered or developed during the course of an examination in the
126 furtherance of any legal or regulatory action that the director, in the
127 director's sole discretion may deem appropriate.

128 (2) Nothing contained in sections 374.900 to 374.940 shall prevent
129 or be construed as preventing the director from disclosing the content

130 of an examination report, preliminary examination report or result, or
131 any matter relating thereto, to the insurance department of this or any
132 other state or agency of the federal government at any time, provided
133 the agency or office receiving the report of matters relating thereto
134 agrees to hold it confidential and in a manner consistent with sections
135 374.900 to 374.940.

136 12. (1) Where the reasonable and necessary cost and fees of a
137 market conduct examination are to be assessed against the insurer
138 under examination, such costs and fees shall be consistent with that
139 otherwise authorized by law. Such costs and fees shall be itemized and
140 bills shall be provided to the insurer on a monthly basis for review
141 prior to submission for payment.

142 (2) The director shall maintain active management and oversight
143 of examination costs and fees, including costs and fees associated with
144 the use of department personnel and examiners and with retaining
145 qualified contract examiners necessary to perform an examination. To
146 the extent the director retains outside assistance, the director shall
147 have in writing protocols that:

148 (a) Clearly identify the types of functions to be subject to
149 outsourcing;

150 (b) Provide specific time lines for completion of the outsourced
151 review;

152 (c) Require disclosure of contract examiners' recommendations;

153 (d) Establish and utilized a dispute resolution or arbitration
154 mechanism to resolve conflicts with insurers regarding examination
155 costs and fees; and

156 (e) Require disclosure of the terms of the contracts with the
157 outside consultants that shall be used, specifically the costs and fees or
158 hourly rates that can be charged.

159 (3) The director shall review and affirmatively endorse detailed
160 billings from the qualified contract examiner before the detailed
161 billings are sent to the insurer.

162 (4) The director may contract in accordance with applicable
163 state contracting procedures, for such qualified contract actuaries and
164 examiners as the director deems necessary, provided that the
165 compensation and per diem allowances paid to such contract persons

166 shall not exceed one hundred twenty-five percent of the compensation
167 and per diem allowance for examiners set forth in the guidelines
168 adopted by the National Association of Insurance Commissioners,
169 unless the director demonstrates that one hundred twenty-five percent
170 is inadequate under the circumstances of the examination.

374.921. 1. Except as otherwise provided by law, market conduct
2 surveillance personnel shall have free and full access to all books and
3 records, employees, officers, and directors, as practicable, of the
4 insurer during regular business hours. An insurer utilizing a third-
5 party model or product for any of the activities under examination
6 shall cause, upon the request of market conduct surveillance personnel,
7 the details of such models or products to be made available to such
8 personnel. All documents, whether from a third party or any insuree,
9 including but not limited to working papers, third-party models or
10 products, complaint logs, and copies thereof, created, produced, or
11 obtained by or disclosed to the director or any other person in the
12 course of any market conduct actions made under sections 374.900 to
13 374.940, or in the course of market analysis by the director of the
14 market conditions of an insurer, or obtained by the NAIC as a result of
15 any of the provisions of sections 374.900 to 374.940, shall be confidential
16 by law and privileged, shall not be subject to subpoena and shall not be
17 subject to discovery or admissible in evidence in any private civil
18 action.

19 2. No waiver of any applicable privilege or claim of
20 confidentiality in the documents, materials, or information shall occur
21 as a result of disclosure to the director under this section.

22 3. Market conduct surveillance personnel shall be vested with
23 the power to issue subpoenas and examine insurance company
24 personnel under oath when such action is ordered by the director.

25 4. Notwithstanding the provisions of subsection 1 of this section,
26 in order to assist in the performance of the director's duties, the
27 director may:

28 (1) Share documents, materials, or other information, including
29 the confidential and privileged documents, materials, or information
30 subject to subsection 1 of this section, with other state, federal, and
31 international regulatory agencies and law enforcement authorities and

32 the NAIC and its affiliates and subsidiaries, provided that the recipient
33 agrees to and has the legal authority to maintain the confidentiality
34 and privileged status of the document, material, communication, or
35 other information;

36 (2) Receive documents, materials, communications, or
37 information, including otherwise confidential and privileged
38 documents, materials or information, from the NAIC and its affiliates
39 or subsidiaries, and from regulatory and law enforcement officials of
40 other foreign or domestic jurisdictions, and shall maintain as
41 confidential or privileged any document, material, or information
42 received with notice or the understanding that it is confidential or
43 privileged under the laws of the jurisdiction that is the source of the
44 document, material, or information; and

45 (3) Enter into agreements governing the sharing and use of
46 information consistent with this subsection.

47 (4) Notwithstanding the provisions of this section, no insurer
48 shall be compelled to disclose an insurance compliance self-evaluative
49 audit document or waive any statutory or common law privilege, but
50 may voluntarily disclose such document to the director in response to
51 any market analysis, market conduct action or examination as provided
52 in sections 374.900 to 374.940.

374.924. 1. Market conduct surveillance personnel shall be
2 qualified by education, experience and, where applicable, professional
3 designations. The director may supplement the in-house market
4 conduct surveillance staff with qualified outside professional assistance
5 if he or she determines that such assistance is necessary.

6 2. Market conduct surveillance personnel have a conflict of
7 interest, either directly or indirectly, if they are affiliated with the
8 management, have been employed by, or own a pecuniary interest in
9 the insurer subject to any examination under sections 374.900 to
10 374.940 within the most recent five years prior to the use of the
11 personnel. This section shall not be construed to automatically
12 preclude an individual from being:

13 (1) A policyholder or claimant under an insurance policy;

14 (2) A grantee of a mortgage or similar instrument on the
15 individual's residence from a regulated entity if done under customary

16 terms and in the ordinary course of business;

17 (3) An investment owner in shares of regulated diversified
18 investment companies; or

19 (4) A settlor or beneficiary of a "blind trust" into which any
20 otherwise permissible holdings have been placed.

374.927. 1. No cause of action shall arise, nor shall any liability
2 be imposed against the director, the director's authorized
3 representatives or an examiner appointed by the director for any
4 statements made or conduct performed in good faith while carrying out
5 the provisions of sections 374.900 to 374.940.

6 2. No cause of action shall rise, nor shall any liability be imposed
7 against any person for the act of communicating or delivering
8 information or data to the director or the director's authorized
9 representative or examiner pursuant to an examination made under
10 sections 374.900 to 374.940, if the act of communication or delivery was
11 performed in good faith and without fraudulent intent or the intent to
12 deceive.

13 3. A person identified in subsection 1 of this section shall be
14 entitled to an award of attorney's fees and costs if he or she is the
15 prevailing party in a civil cause of action for libel, slander, or any
16 other relevant tort arising out of activities in carrying out the
17 provisions of sections 374.900 to 374.940 and the party bringing the
18 action was not substantially justified in doing so. For purposes of this
19 section a proceeding is "substantially justified" if it had a reasonable
20 basis in law or fact at the time that it was initiated.

21 4. This section does not abrogate or modify in any way any
22 common law or statutory privilege or immunity heretofore enjoyed by
23 any person identified in subsection 1 of this section.

374.930. 1. Fines and penalties levied under sections 374.900 to
2 374.940 or other provisions of the state insurance law shall be
3 consistent, reasonable, and justified.

4 2. The director shall take into consideration actions taken by
5 insurers that maintain membership in best-practice organizations that
6 exist to promote high ethical standards of conduct in the marketplace,
7 and insurers that self assess, self-report, and remediate problems
8 detected to mitigate fines levied under sections 374.900 to 374.940.

374.933. 1. The director shall collect and report market data to
2 the NAIC's market information systems, including the complaint
3 database system, the examination tracking system, and the regulatory
4 information retrieval system, or other comparable successor NAIC
5 products as determined by the director. In addition to complaint data,
6 the accuracy of insurer-specific information reported to the NAIC to be
7 used for market analysis purposes or as the basis for market conduct
8 actions shall be reviewed by appropriate personnel in the insurance
9 department and by the insurer.

10 2. Information collected and maintained by the insurance
11 department shall be compiled in a manner that meets the requirements
12 of the NAIC.

13 3. After completion of any level of market analysis, prior to
14 further market conduct action, that state shall contact the insurer to
15 review the analysis.

16 4. (1) A company responding to a director's request to produce
17 information shall produce it as it is kept in the usual course of business
18 or shall organize and label it to correspond with the categories in the
19 demand.

20 (2) If a director's request does not specify the form or forms for
21 producing electronically stored information, a company responding to
22 the request must produce the information in a form or forms in which
23 the company ordinarily maintains it or in a form or forms that are
24 reasonably usable.

25 (3) A company responding to an information request need not
26 produce the same electronically stored information in more than one
27 form.

28 (4) A company responding to an information request need not
29 provide the electronically stored information from sources that the
30 company identifies as not reasonably accessible because of undue
31 burden or cost.

374.936. The director shall share information and coordinate the
2 insurance department's market analysis and examination efforts with
3 other states through the NAIC.

374.940. 1. At least once per year, or more frequently if deemed
2 necessary, the director shall make available in an appropriate manner

3 to insurers and other entities subject to the scope and jurisdiction of
4 Missouri's insurance laws, information on new laws and regulations,
5 enforcement actions, and other information the director deems
6 pertinent to ensure compliance with market conduct requirements.

7 2. The director shall designate a specific person or persons
8 within the insurance department whose responsibilities shall include
9 the receipt of information from employees of insurers and licensed
10 entities concerning violations of laws, rules, or regulations by
11 employers. Such person or persons shall be provided with proper
12 training on the handling of such information, which shall be deemed a
13 confidential communication for the purposes of this section.

14 3. For any change made to a work product referenced in sections
15 374.900 to 374.940, which materially changes the way in which market
16 analysis, market conduct actions, or market conduct examinations are
17 conducted, the director shall give notice and provide parties with an
18 opportunity for a public hearing.

✓
Bill

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